

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Amendments to Regulations: Workers' Compensation – Health Care Organizations

The Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), acting pursuant to the authority granted by Labor Code Sections 133, 4600.3, 4600.5, 4600.7 and 5307.3, proposes to amend existing regulations

The proposed amendments are to Section 9779.5. This Section concerns the payment of administrative fees by HCOs to the Administrative Director.

The proposed amendments will require payment of an existing administrative fee in one single payment instead of allowing an HCO the option of submitting two installments.

The proposed amendments will also reduce a 2004 loan repayment surcharge from one-third of the outstanding loan balance to one-fourth of the outstanding loan balance.

The proposed amendments will also require each HCO to submit a monthly report to the Administrative Director, by the fifteenth day of each month, of its total enrollment as of the first day of that month.

Finally, Labor Code 4600.7 is being added to the reference note.

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

Date: Tuesday, October 21, 2003

Time: 10:00 a.m.

Place: Auditorium

The Governor Hiram Johnson State Office Building

455 Golden Gate Avenue

San Francisco, California 94102

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or any other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

BACKGROUND TO REGULATORY PROCEEDING:

Labor Code Section 4600.7 creates the Workers' Compensation Managed Care Fund in the State Treasury and authorizes the Administrative Director to establish a schedule of fees and revenues to be charged to certified HCOs and applicants for certification to fund the administration of the HCO program.

Section 9779.5 – Reimbursement of Costs to the Administrative Director; Obligation to Pay Share of Administrative Expense:

Section Amended - Subdivision (a):

Existing Section 9779.5(a) requires all organizations certified as HCOs or WCHCPOs to pay an annual assessment to the Workers' Compensation Managed Care Fund representing that entity's share of the costs and expenses reasonably incurred in the administration of the HCO program.

The annual assessment may be paid in two equal installments, with the first payment falling due on or before July 1 and the second installment falling due on or before December 15.

Specific Purpose of Amendment:

The proposed amendment would require the annual assessment to be paid in a single payment due on or before July 1.

Factual Basis That Amendment is Necessary:

The current payment schedule poses an undue burden on DWC's Managed Care Program by further delaying recovery of program costs and staff expenses. These fees are not collected until the calendar year after the services were provided and the expenses incurred.

Section Amended - Subdivision (a)(2):

Labor Code Section 4600.7, as amended in 1998, requires repayment to the general fund to repay a loan used to start up the Managed Care Fund through collection of an annual fifty cent surcharge on each HCO's enrollment fees. The surcharge was required to be collected by each HCO for five years, beginning with fiscal year 1999 and ending with fiscal year 2003. If the surcharge produced insufficient revenue over the initial five year period to repay the loan, Section 4600.7 requires the surcharge to be increased in an amount sufficient to allow full repayment of the loan over the next three fiscal years - 2004, 2005 and 2006.

As the surcharge collections to date have not proved sufficient to repay the loan, the accelerated surcharge provision is about to be triggered.

Existing Section 9779.5(a)(2) will require the Division to collect these increased annual surcharges in amounts to be determined on the following basis:

2004: (One-third of outstanding loan balance) divided by (total number of enrollees in all certified HCOs) times (number of enrollees in HCO)

2005: (One-half of outstanding loan balance) divided by (total number of enrollees in all certified HCOs) times (number of enrollees in HCO)

2006: (Total outstanding loan balance) divided by (total number of enrollees in all certified HCOs) times (number of enrollees in HCO)

Specific Purpose of Amendment:

The proposed amendment will reduce the 2004 loan repayment surcharge from one-third of the outstanding loan balance to one-fourth of the outstanding loan balance.

Factual Basis That Amendment is Necessary:

The current loan balance is roughly \$2.7 million and the increased surcharge provisions in Labor Code Section 4600.7(b) will be triggered at the end of fiscal year 2003.

Deferring a portion of the loan repayment surcharge for one year will allow the surcharge to be collected from a broader enrollment base brought about by the increased HCO enrollment expected in 2004. While HCO enrollment did not grow as fast as originally anticipated at the inception of the program, AB 749 (Calderon, 2001-2002, Statutes 2002, Chapter 6, Section 61) removed many of the structural impediments that prevented HCO growth. AB 749 also made it easier for a Health Maintenance Organization (HMO) licensed by the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act to become certified as an HCO.

There are currently 15 certified HCOs. Two applications for certification are currently under review by Division staff and three organizations are in the process of preparing their applications for certification. It appears that HCO enrollment will finally achieve the kind of significant growth that had been hoped for since the inception of the program.

Adjustment of the repayment of the schedule is necessary to support the growth of HCOs so that the loan can be repaid.

Section Adopted - Subdivision (d):

While HCO enrollment can fluctuate greatly from month to month, HCOs currently report their enrollment only once a year when they pay the administrative expenses assessment required by this Section. At that time they only report their total enrollment as of December 31 of the preceding calendar year. (For example, each HCO reported its December 31, 2002 enrollment at the time it paid the fiscal year 2003 assessment. That enrollment data will be used to calculate that HCO's share of the fiscal year 2004 assessment.)

Specific Purpose of Amendment:

The proposed subdivision would require each Health Care Organization to report to the

Administrative Director, by the fifteenth day of each month, its total enrollment as of the first day of that month.

Finally, Labor Code 4600.7 is being added to the reference note.

Factual Basis That Amendment is Necessary:

A monthly report of enrollment will allow the Division to more closely monitor the HCO program and more effectively allocate staff resources where needed.

Pursuant to Government Code Section 11346.3(c), the Administrative Director has made a finding that requiring each HCO to submit a monthly report of its enrollment is necessary for the health, safety, or welfare of the people of the state, and that it is necessary that this regulation apply to businesses.

The Administrative Director based this determination on the fact that tracking monthly enrollment in HCOs will allow the Administrative Director to more accurately project loan repayment surcharge requirements, allocate staff and resources for program oversight in response to non-linear growth in enrollment and it will assist the Administrative Director in responding to oversight inquiries concerning the HCO program.

The proposed addition of Labor Code Section 4600.7 to the reference note will inform the regulated public that this section establishes the Workers' Compensation Managed Care Fund in the State Treasury and requires the Administrative Director to assess a surcharge for the purpose of repaying the general fund loan used to start up the Managed Care Fund.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The Division did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the above-identified amendments.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

The proposed regulations do not mandate the use of specific technologies or equipment.

REASONABLE ALTERNATIVES TO THE PROPOSED AMENDMENTS AND REASONS FOR REJECTING THOSE ALTERNATIVES

The Administrative Director has not identified any effective alternatives, or any equally effective and less burdensome alternatives at this time. The public is invited to submit such alternatives during the public comment process.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Division is not aware of any adverse impacts on small business. Thus, the Division has not

identified any alternatives that would lessen any adverse impact on small business. The Division invites the public to submit information on possible adverse impacts on small businesses, and propose alternatives that would lessen any adverse impact on small business during the public comment periods for this rulemaking of comments identifying.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The first proposed amendment, requiring the annual assessment to be paid in a single payment instead of allowing the option of two installments merely changes the timing of the payment of the assessment and surcharge, not the amount.

The second proposed amendment, reducing the 2004 loan repayment surcharge from one-third of the outstanding loan balance to one-fourth of the outstanding loan balance will have a positive economic effect by reducing the proportional surcharge paid by current HCOs and possibly allowing subsequent years' surcharges to be spread among additional HCO's enrollees.

The third proposed amendment, requiring each Health Care Organization to submit a monthly report to the Administrative Director of its total enrollment, merely requires each HCO to report data it already has on hand. No new data collection will be required.

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